

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 21, 2013; Ruling No. 2014-3689; Agency: Department of Juvenile Justice; Outcome: Grievant Not in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2014-3689  
August 21, 2013

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management related to the grievant’s March 18, 2013 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On or about March 18, 2013, the grievant initiated a grievance with the agency. The first step response was issued to the grievant on April 15, 2013, and she advanced her grievance to the second step on the same date. The second step response was mailed to the grievant on or about April 30, 2013, but was returned to the agency as undeliverable on June 18, 2013. The second step response was then hand-delivered to the grievant on June 19, 2013.

When the grievant had not advanced or concluded her grievance by June 4, 2013, the agency sent, by certified mail, a letter of noncompliance to the grievant and requested a response within five workdays. It would appear, however, that the letter of noncompliance has not yet been delivered to the grievant.

Since more than five workdays have elapsed since the grievant received the second step response, and the grievant has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.<sup>3</sup>

In this case, the agency's request for a compliance ruling appears to be premature because the agency has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the notice of noncompliance has been received by the grievant. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the second step response and the grievant has not responded.<sup>4</sup> In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or proceed to the third step. If she does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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<sup>2</sup> See *id.*

<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>4</sup> Although the grievant has not received the agency's notice of noncompliance, EDR has notified the grievant that the agency has requested a compliance ruling regarding the grievant's failure to advance or conclude her grievance.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).